93-185

Supreme Court, U.S.
FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER Term, 1993

No_____

STANLEY V. TUCKER,
Petitioner

-v-

CITY OF HARTFORD,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO
THE CONNECTICUT SUPREME COURT

STANLEY V. TUCKER
Petitioner
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28 pp

QUESTIONS PRESENTED

1. Whether Title 21 USC 881 (c) is a bar to Connecticut state court exersing jurisdiction over property held by U.S. Marshall awaiting jury trial on "innocent owner" defense to forfeiture?

2. Whether the order made by Conn Sup. Court affiming Appellate Court should be vacated and reversed for proceedings to establish the affect of sovereign immunity on taxes due since the years property held by U.S. Marshall property is exempt from municipal taxes and by the "relation back" theory several years added to the exempt amount.

3. Whether tax foreclosure proceedings are stayed while forfeiture is pending

4. Whether Petitioner entitled to Due Process credits tax appeal & interception

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IN THE SUPREME COURT

OF THE

UNITED STATES

APRIL TERM, 1993

STANLEY V. TUCKER,
PETITIONER,

—VS—

CITY OF HARTFORD, RESPONDENT,

Petition For A Writ of Certiorari to the CONNECTICUT SUPREME COURT OF CONNECTICUT

Stanley V. Tucker respecticfully prays a writ of certiorari issue to review and reverse the final decision of the CONNECTICUT SUPREME COURT of Conn. printed in the Conn. Law Journal March 23, 1993 225 Conn 211 reprinted in the Appendix A 1-7.

OPINIONS

The decision of the Conn Sup Ct will be reported 225 Conn 211 the opinion of the District Court just received is believed reported __ F Supp___,

JURISDICTION

The final decision of the Conn Sup Ct was printed in Conn Law Journal March 23, 1993. Because that Court granted Certification only to hear if a stay mandatory while property is being held by U.S. Marshall while "innocent owner" defense is being litigated it remanded without reaching question of "sovereign immunity" during the years of federal litigation. No re-hearing was applied for and jurisdiction of This Court is invoked under 28 USC 1257 (3).

STATUTORY PROVISIONS

Title 21 USC 881 c "provides "property detained under this section... shall be only to the orders and decrees of the court having jurisdiction'

Unnoticed and unmentioned in its decision this law passed by Congress is believed to prevent any State court purporting to sell property while held by U.S. Marshall

REASONS FOR GRANTING WRIT

In our multi-court system (state & federal) if the state Supreme Court is right it could then seize

and sell property lawfully held by the U.S. and circumvent the forfeiture laws passed by Congress. Indeed the very decision issued shows its doubt since it states it is impossible to sell property held by the U.S. and recommends a long (discretionary) stay by the state courts until after the property released by the U.S. Indeed the decision is believed to rest upon unfirm grounds where Newport S & L (an innocent mortgage lender) applied to the District Court and was denied leave to proceed with foreclosure. Upon appeal to the 1st CA the DENIAL was affirmed because (just as in this case) no bond was offered under the Admiralty laws.

In Re Newport S & L
928 F 2d at 480
1st CA

[7] We need not determine the exact meaning of the customs statute in this case, nor need we determine the exact scope of the court's supervisory powers, for Newport has made no effort to follow customs or other bonding procedures. Newport has not offered to post a bond. Newport did file an affidavit stating that the value of the commercial piece of property is less than the value of its mortgage. But, the record does not reflect the Government's valuation of the Sundel properties. *Cf.* 19 U.S.C. § 1606 (providing for Government appraisal of seized property); 21 C.F.R. § 1316.74 (same); 19 C.F.R. § 162.43 (same). In any event, the Government responded with what the record suggests was a denial. *See* Docket Entry 11.

II. HARTFORD NOT INNOCENT MUNICIPALITY

It is petitioner's claim, supported by case law. that Hartford is not an innocent municipality by reason that the building suffered a fire in June 1983, was vacated of tenants and stood empty until mid 1988 due to Hartford attempting to put a lien on the insurance proceeds. Judge Hammer ruled the lien invalid but Hartford took an appeal and the Appellate Court upheld lien being invalid. Liberty Mutual v Tucker 11 CA 308. Once the lien discharged the building was rapidly renovated and rented altho City Taxes balloned with 15% annual interest Rate.

For another reason Hartford is not an innocent municipality is that ignoring tax appeals startin in 1983 City attempted to foreclose on wrong valu but were reversed by Appellate Court, Hartford v Tucker 8 Conn App 215. Indeed if Conn. had equitable trial judges the monstrous taxes would be abated. There are many errors in City's tax including $10,000 impounded but not given credit for and Tax Lists included for which no continuing lien exists.

III. HARTFORD INTERCEPTIONS UNCONSTITUTIONAL

Beginning with the recession large cities like Hartford had large swarms of people single and without a job "on city" supported by city social services in turn reembursed by the state. The tax collector used a "home made interception"- seizing the social services check and demanding it for payment on taxes, No statute exists to authorize it and no Due Process hearing takes place. Much later this Petitioner learned the money totalling $ 8,985 was merely "seized" and never applied to taxes!

Two state law intercept statutes stricken down by our federal courts.

Nelson v Regan 560 F Supp 1101 Jan 14, 1983	"IRS intercept for past due child support violates Due Process"
Wright v Tanezio USDC Ct No 81-353 3-11-83	" Conn GS 52-361 fails to Provide prior to execution .....a speedy adequate and meaningful opportunity to be heard at a meaningful time"

Hartford's interception without any legal authority does not give tax credit promised.

IV. SOVEREIGN IMMUNITY BARS TAXES IN US POSSESSION

It is undisputed that the property seized August 1991 all windows and doors boarded with plywood and all tenants moved out with offers of Section 8 Housing. No Due process hearing ever offered or held. Indeed it took Conn's District Court 1 1/2 Years to issue its ruling ____ F Supp____ that owner entitled to "innocent owner" jury trial Not yet calendared. The first drug case reportd by U/S attorney March 1989 but promptly served with Notice to Quit and moved out. Under the "relation back" theory sovereign immunity would bar the List of 1988, 1989, 1990, 1991, 1992 and 1993.

Van Brocklin v Tennessee

117 U S 191 at 155 1885

"The soverentv of a state... does not extent ...to those means used by Congress to carry out its executive powers...."

The decision below should be reversed and remande for trial court to determine the affect of soverei immunity baring taxes. These proceedings to star after the "innocent owner" trial and property is released by U.S.

v. BUT COMPARE 7 CA RELEASE PROPERTY TO STATE COURT

The Conn State Court has relied upon 7CA release of property seized by U.S. Marshall while in the possession of State Court forfeiture actions both state and federal actions were IN REM.

US v $79,123
830 F 2d 94at 99

> Section 881, however, does not enact a general rule of necessity authorizing the federal executive branch to override state law whenever it deems federal interests insecure. In the absence of any statutory language supporting the government's interpretation, we must assume that Congress envisioned a more respectful procedure.

While the 7th CA seems to clash with 1St CA it should be noted Hartford's suit is not IN REM but IN PeRSONAM but this still does not clearly resolve the meaning of 21 USC 881 c

If we look to this court's ruling reversing an EN BANC 2nd CA Court things are more clear.

U.S. v Monsanto
491 US at 612

> "Whatever purpose Congress gave the District Court.... this discretion must be cabined for the purpose Congress created it - to preserve property for forfeiture...."

In its decision that Conn Supreme Court states that this issue is of first impression to Conn and stated the Trial Court should order a Stay (but discretionary) to last until the District Court completes all proceedings and releases the property. While Petitioner is convinced he is an innocent owner" still Appellate Court has ruled a Drug Pusher must be given a 30 day letter before he can be evicted. Norwalk Housing v Harris 28 Conn App 684 Conn GS 47a-15

V. CONCLUSION

May the decision below be summarrily reversed on Grounds of 21 USC 881 c and U.S. v Monsanto supra and the trial court directed to hear issues of sovereign immunity to taxes during the 6 years of federal possession and relation back and Due Process omissions in its "Intercept" program and Tax Appeals. RESPECTFULLY SUBMITTED

STANLEY V. TUCKER

No 9831 Hartford : APPELLATE COURT

-v- : CONNECTICUT

STANLEY V. TUCKER : April 21, 1992

27 Conn App 910 "Decision Affirmed"

No 9831 Hartford : APPELLATE COURT

-v- : CONNECTICUT

STANLEY V. TUCKER : May 28, 1992

27 Conn App 916 "ReHearing Denied"

SC 14573 Hartford : CONN SUPREME COURT

-v- : CONNECTICUT

STANLEY V. TUCKER : July 9, 1992

223 Conn 909

Defendant's petition for certification for appeal from 27 Conn App 912 is granted limited to "does initiation of federal forfeiture proceedings stay concurrent foreclosure proceedings pending in the state court"

SC 14573 Hartford : CONN SUPREME COURT

-v- : CONNECTICUT

STANLEY V. TUCKER : March 23, 1993

225 Conn 111

Peters, C. J., Callahan, Berdon, Norcott and Katz, Js.

The plaintiff city of Hartford brought an action to foreclose certain municipal tax liens on property owned by the named defendant. T. T appealed the trial court's judgment of foreclosure by sale to the Appellate Court. While that appeal was pending, the federal government brought a drug forfeiture against T's property pursuant to the Controlled Substances Act (21 U.S.C. 881). The Appellate Court affirmed the judgment of the trial court, and T, on the granting of certification, appealed to this court claiming that the initiation of the federal forfeiture proceeding automatically stayed the concurrent foreclosure proceeding in the state's courts. Held that in the absence of statutory language supporting a stay of evidence that Congress clearly in-

tended tnat the federal government have exclusive jurisdiction, 21 U.S.C. 881 does not bar concurrent state court jurisdiction and therefore, the initiation of the federal forfeiture proceeding under that statute did not require a stay of the concurrent foreclosure proceeding. Argued december 3, 1992-decision released March 23, 1993

Action to foreclose municipal tax liens on certain real property owned by the named defendant, and for other relief, brought to the Superior Court in the judicial district of Hartford-New Britain at Hartford, where the named defendant filed a counterclaim and where the defendant Burrit Mutual Savings & Loan Association et al. were defaulted; thereafter, the case was tried to the court, Aspell, J.;judgment in part for the plaintiff on the complaint and on the counterclaim, from which the named defendant appealed; subsequently, the court, Shaughnessy, J., granted the plaintiff's motion for judgment

of strict foreclosure and rendered judgment thereon, and the named defendant filed an amended appeal to the Appellate Court, Hull, Spallone and Bieluch, Js., which reversed the trial court's judgment and remanded the case for further proceedings; on remand, the trial court, O'Connor,J., rendered judgment of foreclosure by sale, from which the named defendant appealed to the Appellate Court, O'Connell, Lavery and Heiman, Js., which affirmed the trial court's judgment, and the named defendant, on the granting of certification, appealed to this court. Affirmed.

Stanley V. Tucker, pro se, the appellant (named defendant). Michael C. Collins, assistant corporation counsel, for the appellee (plaintiff).

Norcott, J. The sole issue in this appeal is whether the initiation of a federal forfeiture proceeding pursuant to 21 U.S.C. 881 requires a stay of concurrent state foreclosure proceedings pursuant to General Statutes 12-181. The

plaintiff, the city of Hartford, initiated an action of the trial court to foreclose municipal tax liens on property owned by the named defendant, Stanley Tucker, The named defendant appealed the trial court's judgment of foreclosure by sale to the Appellate Court, which affirmed the judgment of the trial court. Hartford v. Tucker, 27 Conn.App.912,606 A.2d 62(1992). We granted the named defendant's petition for certification limited to the following issue: "Does the initiation of federal forfeiture proceedings stay concurrent foreclosure proceedings pending in the state's courts?" Hartford v. Tucker, 223 Conn.909,612 A.2d 55 (1992). We conclude that it does not.

The relevant facts are undisputed. The plaintiff commenced an action to foreclose municipal tax liens on property owned by the named defendant in February 1983. After a second trial,[1] the trial court rendered a

judgment of foreclosure by sale. The named defendant appealed to the Appellate Court, which affirmed the judgment of foreclosure by sale and remanded the case to the trial court to reset the foreclosure sale date. Hartford v. Tucker, supra, 27 Conn.App. 912. While the named defendant's appeal of the judgment of foreclosure by sale was pending in the Appellate Court, the federal government filed an action against his property pursuant to 21 U.S.C. 881, the forfeiture provision of the Controlled Substances Act. This statute provides that all property that is used to facilitate a violation of the act's provisions is subject to forfeiture to the United States. The complaint filed by the federal government in August 1991, alleged that, beginning in March, 1989, controlled substances were sold on the named defendant's property. The property was seized by a United States marshall in August of 1991.

Shortly after the Appellate Court's decision had been rendered, the named defendant filed a motion for rehearing in the Appellate Court. That motion asserted, for the first time, that sovereign immunity and interests of comity required that the state foreclose action be stayed because the same res was at issue in both the state and federal actions. This motion was denied. The named defendant then petitioned this court for certification, which we granted limited to consideration of whether the initiation of a federal forfeiture proceeding automatically stayed concurrent foreclosure proceedings pending in the state's courts.

The named defendant claims that 881(c)[2] gives exclusive jurisdiction to the federal courts over property subject to forfeiture while forfeiture actions are pending.[3] Thus, he argues, any concurrent state actions must automatically be stayed pending the outcome

of the federal forfeiture action. We disagree This is an issue of first impression in Connec icut. An analogous situation, however, was recently addressed by the United States Court of Appeals for the First Circuit in In re Newport Savings & Loan Assn., 928 F.2d 472 (1st Cir. 1991), where a bank, holding mortgages on property seized by the federal government under 881, sought to initiate a forclosure proceeding in the state court on the same property. The court held that 881 (d) provides the necessary guidance when there are multiple claims to the same property. That provision states that "(t)he provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws... shall apply to seizures and forfeitures (under this statute ... insofar as applicable and not inconsistent with the provisions hereof...." (Emphasis added.) 21 U.S.C. 881(d). The court further explained that the customs laws permitted the

release of seized property upon the posting of a proper bond. In re Newport Savings & Loan Assn., supra, 479. Customs laws, therefore, contemplate the exercise of concurrent jurisdiction over the same res so long as proper security is offered through the posting of a bond to protect the government's interests. We agree with the reasoning of the court in In re Newport Savings & Loan Assn., supra, that the enactment of 881(d) counsels against reading the forfeiture statute to provide for exclusive jurisdiction. We note,moreover, that 21 U.S.C. 903,[4] the antipreemption provision of the Controlled Substances Act, evidences the fact that Congress specifically considered the issue of concurrent state proceedings and decided to allow them. See United states v. $79,123.49 In United States Cash & Currency, 830 F.2d 94 (7th Cir. 1987) (concurrent state and federal forfeiture actions held to be permissable due to the antipreemption provision).[5]

Furthermore 881 is "unlike bankruptcy,[6] (in that) no (provision) seems to say that anyone needs a federal court's approval in order to bring a state-law foreclosure action." In re Newport Savings & Loan Assn., supra, 474. In the absence of unambiguous statutory language supporting a stay or evidence that Congress clearly intended that the federal government have exclusive jurisdiction, we hold that 21 U.S.C. 881 does not bar concurrent state court jurisdiction. We conclude, therefore , that the initiation of federal forfeiture proceedings under 881 does not require a stay of concurrent state foreclosure proceedings. Our conclusion, however, is not determinative of whether a discretionary stay might be appropriate in this sort of proceeding. We note that "as a practical matter, it may be impossible to find a buyer at a foreclosure sale for property that is "in the custody of the Attorney General,'21 U.S.C. 881(c), and to which the

United States asserts a legal claim." In re Newport Savings & Loan Assn., supra. It undoubtedly would be within the power of the trial court, in the reasonable exercise of its discretion, to stay further proceedings pending the outcome of the forfeiture action. See First National Bank & trust Co. v. McCoy, 124 Conn. 111,116,198 A.183 (1938); Sauter v. Sauter, 4 Conn.App. 581,584-85,495 A.2d 1116 (1985). On remand to the trial court to set the foreclosure sale date, therefore, the trial court should consider whether a discretionary stay would be warranted. The judgment of the Appellate Court is affirmed. in this opinion the other justices concurred.

FOOTNOTES

[1] On March 11, 1985, the trial court, Shaughnessy, J. rendered judgment of strict foreclosure from which the named defendant appealed. The Appellate Court concluded that the trial court had miscalculated the amount of tax arrearage and remanded the case for a new trial. Hartford v. Tucker, 8 Conn. App. 209,215,512 A.2d 944(1986). It is from the Appellate Court's affirmance of the trial court's judgment on the second trial that the named defendant appeals pursuant to our grant of certification.

[2] 21 U.S.C. 881(c) provides in relevant part: "Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof."

3 The named defendant also claims that the taxes assessed on the 1988-91 tax lists were invalid due to 21 U.S.C. 881(h), which states that "(a)11 right, title, and interest in property descibed in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section." In this case, therefore, title to the named defendant's property would have vested in the United States on March 2,1989, the date of the first alleged infraction, rather than on August 26,1991, the date of the seizure. He claims that because the city of Hartford has no right to tax the federal government, all taxes relating back to the date of the original violation are void. The plaintiff concedes this point. But see United states v. A Parcel of Land, Buildings, Appurtenances and Improvements, known as 92 Buena Vista Avenue, Rumson, New Jersey, U.S. (61 U.S.L.W.4188,4194, Feb-

ruary 23, 1993) (relation back doctrine of 881 (h) does not vest title in the federal government until it has obtained a judgment of forfeiture). We do not address this claim, however, as it is not relevant to the certified issue.

[4] 21 U.S.C. 903 provides as follows: "No provision of this subchapter shall be construed as indicating an intent on that part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the smae subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and the State law so that the two cannot consistently stand together."

[5] The United States Court of Appeals for the

Seventh Circuit further stated that 21 U.S.C. 881 (c) "hardly establishes that the state court lacks jurisdiction...since the court was proceeding under a valid (state) forfeiture statute." United states v. $79,123.49 in United States Cash & Currency, 830F.2d 94,98 (7th Cir. 1987). That court, therefore, found the state and federal forfeiture statutes to be sufficiently disparate so that there was not a positive conflict...so that the two could not consistently stand together. 21 U.S.C. 903. State foreclosure proceedings and federal forfeiture actions are even more dissimilar, and therefore even less likely to produce the conflict contemplated by 21 U.S.C. 903.

[6] The federal bankruptcy statute, 11 U.S.C. 362, provides in pertinent part: "(a) Except as provided in subsection (b) of this section, a petition filed under section 301,302, or 303

of this title, or an application filed under section 5 (a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee (a)(3)), operates as a stay, applicable to all entities, of-

"(1) the commencement or continuation, including the issuance or employment of process, of a judicial, admmistrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title ...."

LIST OF CHECKS SEIZED BY CITY OF HARTFORD

The amount seized total $8,987.06

Sept 10 , 1991

s/ H. BURTON LAWRENCE
Tax Investigator